Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-871

JOHN V. TERRY and ALINE S. TERRY,
Petitioners,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation, and LEONARD M. FREIDMAN, ROBERT K. PUGLIA, and EDWIN J. REGAN, Justices of the Court of Appeal of the State of California, Third Appellate District,
Respondents.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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Subject Index

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement of the case	3
Reasons for granting the writ	6
A. Bad cases through dicta have evolved judicial immunity into judicial sovereignty	6
B. 42 U.S.C.A. 1983 provides a Federal remedy where State courts do not. Review of facts and law are not involved as much as due process	7
C. The present case would be a proper vehicle to reconcile 42 U.S.C.A. 1983 with judicial immunity and with Stump v. Sparkman, No. 76-1750, pending herein	8
Conclusion	
A decision in the present case would strengthen our court system under law and head off illegal judicial sovereignty	8-9

Table of Authorities Cited

Cases	Pages
Stump v. Sparkman, No. 76-1750, ruling below, CA 7, 45 LW 2462	8

Rules	
Fed. R., Civ. P., Rule 56	2

Statutes	
12 U.S.C.A., Sec. 1131d, as amended, Sec. 20 of the Farm Credit Act of 1933	4, 5
12 U.S.C.A., Sec. 2091	5
28 U.S.C.A., Sec. 1254(1)	2
42 U.S.C.A., Sec. 1983	2, 3, 5, 7, 8

Constitutions	
California Constitution, Art. XI, Sec. 4½, as amended in 1914	3

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PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

Petitioners respectfully pray that a writ of certiorari issue to review the decision and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding November 1, 1977, petition for rehearing denied November 18, 1977, affirming summary judgments against Petitioners, which had

been entered by the United States District Court for the Eastern District of California.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is attached to this Petition as Appendix A. The order denying petition for rehearing is attached as Appendix B. The District Court wrote no opinion. Its Orders granting defendants' motions for summary judgment pursuant to Rule 56, Fed. R. Civ. P., are attached to this Petition as Appendices C and D.

JURISDICTION

The Court of Appeals entered judgment November 1, 1977, herein. Petitioners' Petition for Rehearing was denied by the Court of Appeals on November 18, 1977, in an unpublished Order. The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1254(1).

QUESTIONS PRESENTED

Does the doctrine of judicial immunity supercede 42 U.S.C.A. Sec. 1983? Conceding immunity from personal liability, does judicial immunity permit the taking of a farmer's ranch, stock and equipment without due process?

STATUTES INVOLVED

42 U.S.C.A. Sec. 1983 provides as follows:

> That every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. (Sec. 1983 is derived from the Act of April 20, 1871.)

California Constitution, Art. XI, Sec. 4½, as amended in 1914, provides:

> No judgment shall be set aside, or new trial granted, in any case, on the grounds of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error to any matter of procedure, unless, after an examination of the entire cause including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

STATEMENT OF THE CASE

This case was initiated by Klamath Production Credit Association upon notes claimed due and owing from the Terrys and to foreclose security interests against their ranch, livestock, and farm equipment.

The Terrys cross-complained for fraud, deceit, and undue influence and breach of confidential relationship by the Klamath Production Credit Association, causing them damages. After a jury trial in the Superior Court of Siskiyou County, California, the Terrys prevailed and recovered judgment against Klamath Production Credit Association for their damages and a cancellation of the note and security instruments. Klamath Production Credit Association appealed to the California Court of Appeal for the Third Appellate District, challenging the sufficiency of the evidence, the cancellation of their obligations, and the award of punitive damages. Respondents Freidman, Puglia, and Regan, without any transcript in relation to the submission of instructions and verdict form, which had been agreed upon between counsel for Klamath Production Credit Association and the Terrys, without argument, assignment of error, or other basis, found that the instructions and the verdict form were confusing. This gave Respondents herein the authority to substitute their own findings of fact and judgment for those of the trial judge and jury. This was contrary to California law and due process.

Klamath Production Credit Association is chartered under Sec. 20 of the Farm Credit Act of 1933, 12 U.S.C.A., Sec. 1131d, as amended. In 1971, Congress rewrote the law and enacted a comprehensive credit system which provides: "Each production credit association chartered under Section 20 of the Farm Credit

Act of 1933, as amended, shall continue as a *federally chartered instrumentality* of the United States.", 12 U.S.C.A., Sec. 2091.

The instructions and jury verdict form were not challenged by the Klamath Production Credit Association in the Court of Appeal for the Third Appellate District of California, either by transcript, in their brief, or oral arguments. This matter was not brought up on oral argument before that court, and the Terrys were given no hearing, either in that court or the California Supreme Court, in relation thereto. Thus, the matter was never heard in the California State Courts.

The Terrys then filed a petition for removal of the State Court action to the United States District Court for the Eastern District of California, citing as a basis for such removal, 42 U.S.C.A. 1983. At the same time, a legal action was commenced in the United States District Court for the Eastern District of California, based upon the depriving of the Terrys of their judgment and property without due process, made actionable under 42 U.S.C.A. 1983. The Respondents Freidman, Puglia, and Regan requested summary judgment on the basis of judicial immunity. Klamath Production Credit Association requested summary judgment on the basis that it had not acted under the color of any statute or other law of any state or territory.

The United States District Court for the Eastern District of California held that judicial immunity

barred the action against Freidman, Puglia, and Regan, even though no personal judgment was sought against these Respondents. This also barred the action against Klamath Production Credit Association because it was not acting under color of any statute or law. This provided an ingenuous loophole for the denial of redress to the Terrys by the confusion of general legal principles.

REASONS FOR GRANTING THE WRIT

A. THUS THE DOCTRINE OF JUDICIAL IMMUNITY HAS BECOME THE DOCTRINE OF JUDICIAL SOVEREIGNTY.

Cases where there were no causes of action were dismissed on the basis of judicial immunity. This combined with the natural reluctance of one judge to pass judgment on another and strengthened the original error. Generally speaking, a judicial officer should be immune from actions for damages caused by error in his acting upon the matters before him. This can be corrected on appeal. But where a judicial officer has acted outside of his jurisdiction and falsified the record to do so, and this deprives a citizen of his property and property rights, judicial immunity should not bar the remedy even though the officers be immune from personal liability. Thus in an action brought for judicial wrong, the judge defends his reputation, the wrongfully benefited party loses his illicit gain, and the ends of justice are served. That the wrongful taking was under color of State law by the judges and Federal agency cannot be disputed.

Does the undeserved-unblemished reputation of a judicial officer outweigh the wrongful taking of a farm couple's property and livelihood under a misconceived theory of judicial self-preservation? This is judicial sovereignty without legal basis or right.

B. 42 U.S.C.A. 1983 DOES NOT PROVIDE FOR A REVIEW OF STATE COURT DECISIONS BY THE FEDERAL COURT, BUT THIS IS THE AVENUE OF ESCAPE CHOSEN BY THE FEDERAL COURTS IN THEIR CONFUSION OF THE DOCTRINE OF JUDICIAL IMMUNITY.

If the facts and law of a given case are properly before the State Court, and the State Court makes a decision for whatever reason, this is not subject to challenge under 42 U.S.C.A. 1983, race, religion, or politics notwithstanding. But where a matter is not before the State Court and there is a State constitutional provision prohibiting such action, an act of the State Court depriving a party of its rights, privileges, and immunities does render that judge subject to action under 42 U.S.C.A. 1983, but not personal liability under the doctrine of judicial immunity. Thus the remedy provided by statute is permitted and the doctrine of separation of powers is preserved and justice is satisfied under our law.

C. THIS PETITION PRESENTS THIS COURT WITH AN OPPORTUNITY TO RECONCILE THE DOCTRINE OF JUDICIAL IMMUNITY WITH 42 U.S.C.A. 1983, SO AS TO PREVENT A WRONGFUL JUDICIAL ACT FROM DEPRIVING THE HARD WORKING FARM COUPLE FROM THE FRUITS OF THEIR LIFE'S WORK.

Prior cases directed to this Court's attention have attempted to correct error in the State Court and to impose personal liability upon judicial officers where no such cause of action existed. This case does not charge the Respondents Freidman, Puglia, and Regan with error, but with judicial wrongdoing. It does not seek to recover damages from these Respondents, but the relief to which Petitioners are entitled from the Respondent Klamath Production Credit Association, which in fact caused these damages.

The Court recently granted certiorari in the case of *Stump v. Sparkman,* No. 76-1750, ruling below CA 7, 45 LW 2462, which shows the pressing need for some type of proper solution to the problems presented herein. That case is in conflict with the decision herein sought to be reviewed.

CONCLUSION

Judicial immunity should be defined so as to protect judicial officers from personal liability for acts within the scope of their duties, but not to prevent the redress of wrongs committed by such excessive acts as authorized by 42 U.S.C.A. 1983. Petitioners respectfully request a Writ of Certiorari be granted to define the doctrine, which the lower courts were

unwilling to do, and strengthen, rather than weaken, the judiciary. Sovereignty is not permitted by our Constitution or our way of life, and the refusing to hear an action involving a judicial officer is the imposition of sovereignty rather than the more flexible doctrine of immunity, which does prevent redress for a wrongful act.

December 14, 1977.

Respectfully submitted,
GLENN D. RAMIREZ,
Attorney for Petitioners.

(Appendices Follow)

Appendices

Appendix A

DO NOT PUBLISH

United States Court of Appeals
for the Ninth Circuit

No. 77-1019

JOHN V. TERRY and ALINE S. TERRY,
Plaintiffs-Appellants,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation, and LEONARD M. FRIEDMAN, ROBERT K. PUGLIA, and EDWIN J. REGAN, Justices of the Court of Appeal of the State of California, Third Appellate Judicial District,
Defendants-Appellees.

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation,
Plaintiff and Cross-Defendant-Appellees,

vs.

JOHN V. TERRY, et ux., et al.,
Defendants and Cross-Complainant-Appellants.

[November 1, 1977]

Appeal from the United States District Court
for the Eastern District of California

MEMORANDUM

Before: TRASK, WALLACE and ANDERSON, Circuit Judges.

This appeal involves two actions which were consolidated by the District Court below. The action styled "Klamath Production Credit Assoc. (KPCA) v. John V. Terry, et ux." (the Terrys) was originally commenced in the Superior Court of the State of California by KPCA to collect money due on some notes and to foreclose upon the security for the notes. The Terrys cross-complained on the grounds of fraud, deceit and duress. On this cross-complaint they were awarded a $65,000.00 judgment. KPCA appealed to the California Court of Appeals for the Third Appellate District. There, three Appellate Justices, The Honorable Leonard M. Friedman, Robert K. Puglia and Edwin J. Regan, reversed the $65,000.00 judgment and remanded the case back to the trial court.[1] The Terrys then filed a petition for removal in the United States District Court for the Eastern District of California. KPCA moved to remand the case back to the state courts on the ground that the District Court lacked jurisdiction over the action and on the ground that the petition for removal was not timely. The court granted the motion to remand and the Terrys appealed. We dismiss this appeal.

The action styled "John V. Terry, et ux v. Klamath Production Credit Association, et al." is a § 1983 civil

[1]Terry's petition for rehearing with the Court of Appeals was denied. Terrys then filed a petition for hearing in the Supreme Court of the State of California which was likewise denied.

rights action (42 U.S.C. 1983) against KPCA and the three Appellate Court Judges who reversed the Terrys' state court judgment. Basically, the complaint alleged that KPCA prosecuted an appeal "totally lacking in merit," that the defendant judges erroneously reversed the trial court's decision, and that the defendant judges "unlawfully" deprived the Terrys of their property without due process of law. The complaint sought injunctive relief and damages.

KPCA and the defendant judges moved to dismiss the complaint. The District Court granted the motion on the ground that the complaint failed to state a claim upon which relief could be granted. The Terrys appealed. We affirm.

REMAND ISSUE

The Terrys have appealed from the District Court's order which remanded their state case back to the California state courts. We dismiss this appeal because we have no jurisdiction.

It is well-settled that an order remanding a case to the state court from which it was removed is not reviewable on appeal, 28 U.S.C. 1447(d).[2] ". . . Congress immunized from all forms of appellate review any remand order issued on the grounds specified in § 1447(c) (the same grounds specified by the District

[2]There is one exception to this rule and that is for cases which were originally removed under 28 U.S.C. 1443. This exception is inapplicable in this case because removal under 28 U.S.C. 1443 must be premised on a denial of civil rights "stated in terms of *racial* equality." *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975) (emphasis added).

Court in the instant case (CT 188)) whether or not that order might be deemed erroneous by an appellate court." *Therntron Products, Inc. v. Hermansdorfer*, 523 U.S. 336, 351 (1976).

THE § 1983 ACTIONS

As for the civil rights claim against KPCA, a private party cannot be held liable under 42 U.S.C. 1983 unless his wrongful action was done under color of state law or state authority. *Monroe v. Pape*, 365 U.S. 167 (1961), *Hill v. McClellan*, 490 F. 2d 859 (5th Cir. 1974). Nowhere have the Terrys alleged that KPCA acted under color of state law. Even assuming they had so alleged, their claim against KPCA would have to fail because merely utilizing the legal machinery of the state court system is not action "under color of state law." *See, Stevens v. Frick*, 372 F. 2d 378, 381 (2nd Cir. 1967), *cert. den.*, 387 U. S. 920.

The Terrys' civil rights claim against the three California Court of Appeal Judges must fail because the judges are immune from civil liability for acts committed within their judicial jurisdiction. *Pierson v. Ray*, 386 U.S. 547, 554 (1967), *Gregory v. Thompson*, 500 F. 2d 59, 63 (9th Cir. 1974). There is no question that the three judges, in reversing the Terrys' lower court judgment were acting within their judicial jurisdiction.

INJUNCTIVE RELIEF

The California Court of Appeal had reversed the lower court judgment in favor of the Terrys. The

Terrys now urge that the federal courts, in effect, review and reverse that decision by restraining the California appellate court from enforcing or effecting its decision.

There are no circumstances in this case which would even remotely justify federal intervention into the state court proceedings. We find that the district court below properly refrained from interjecting itself into the affairs of the state courts. *See, Hoffman v. Pursue, Ltd.*, 420 U.S. 592, 610-611 (1975).

This appeal is DISMISSED in part and AFFIRMED in part.

Appendix B

In the United States Court of Appeals
for the Ninth Circuit

No. 77-1019

JOHN V. TERRY and ALINE S. TERRY,
Plaintiff-Appellants,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation, and LEONARD M. FRIEDMAN, ROBERT K. PUGLIA, and EDWIN J. REGAN, Justices of the Court of Appeal of the State of California, Third Appellate Judicial District,
Defendants-Appellees.

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation,
Plaintiff and Cross-Defendant-Appellees.

vs.

JOHN V. TERRY, et ux., et al.,
Defendants and Cross-Complainants-Appellants.

[Filed November 23, 1977]

ORDER

Before: TRASK, WALLACE and ANDERSON, Circuit Judges.

The panel has fully considered the petition for rehearing and it is DENIED.

Appendix C

In the United States District Court for the
Eastern District of California

No. Civ. S-76-320-TJM

JOHN V. TERRY, et al.,
Plaintiffs,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation, et al.,
Defendants.

[Filed September 29, 1976]

ORDER DISMISSING COMPLAINT

The motions to dismiss of defendant Klamath Production Credit Association and defendant Justices Leonard M. Friedman, Robert K. Puglia and Edwin J. Regan came on regularly for hearing on September 20, 1976, the Honorable Thomas J. MacBride, Judge, presiding. The court having considered the briefs on the issues, heard oral argument of the parties, and being fully advised, and good cause appearing therefore,

It Is Ordered that the motions to dismiss of defendant Klamath Production Credit Association and defendant Justices Leonard M. Friedman, Robert K. Puglia and Edwin J. Regan are hereby granted;

It Is Further Ordered that the complaint on file herein be and the same is hereby dismissed.

Dated: September 29, 1976.

T. J. MacBride

Judge of the United States
District Court

Copies Mailed to Parties of Record

In the United States District Court for the Eastern District of California

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No. Civ. S-76-320-TJM

JOHN V. TERRY, et al.,
Plaintiffs,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation, et al.,
Defendants.

[Filed November 23, 1976]

ORDER DENYING MOTION FOR RECONSIDERATION

The motion of plaintiffs John V. Terry and Aline S. Terry for reconsideration of the court's order, dated September 29, 1976, dismissing the complaint herein, came on for hearing on November 15, 1976. The court having considered the briefs of the parties, and good cause appearing therefor,

It Is Ordered that the motion for reconsideration is denied.

Dated: November 23, 1976.

T. J. MacBride

Judge of the United States
District Court

Appendix D

In the United States District Court for the Eastern District of California

No. 76-392-PCW

KLAMATH PRODUCTION CREDIT ASSOCIATION, a corporation,
Plaintiff and Cross-Defendant,
vs.
JOHN V. TERRY, et ux, et al.,
Defendants and Cross-Complainants.

[Filed November 23, 1976]

ORDER DIRECTING REMAND, FORFEITURE OF BOND, AND PAYMENT OF COSTS AND ATTORNEYS' FEES

Defendant Klamath Production Credit Association's motion to remand came on for hearing on November 15, 1976, the Honorable Thomas J. MacBride, Judge, presiding. The court having considered the briefs of the parties, and it appearing that the within action was removed improvidently and without jurisdiction,

It Is Ordered that the motion to remand is granted, and this action is hereby remanded to the Superior Court of the State of California, County of Siskiyou; the clerk of this court is directed to mail a certified

copy of this order to the clerk of said Superior Court;

It Is Further Ordered that defendants' bond for removal is hereby forfeited;

It Is Further Ordered that the clerk of this court shall disburse the proceeds of said bond to Klamath Production Credit Association in care of their attorneys, Diepenbrock, Wulff, Plant & Hannegan, on account of costs as taxed by the clerk, and the remainder on account of attorneys' fees incurred in these proceedings.

Dated: November 23, 1976.

T. J. MacBride

Judge, United States District Court